Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

NO.

in the Supreme Court Of the United States of America

Eddie Bradford: Lee, William Sanford: Gadd, Kathy Carole: Moore, Flax Trust, Rainbow Trust, Highlander Trust, Road To Freedom [Trust], Tree Trust, HFS Trust, Cornerstone Trust,

Plaintiffs,

vs.

David A. McClellan, Becky Rice, Dan Paulson, Julia Mueller, H. Brent McKnight, William J. Williamson, Wachovia Bank of North Carolina

Defendants

PETITION FOR WRIT OF CERTIORARI

Eddie Bradford: Lee
William Sanford: Gadd
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56pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether "unpublished' and "not for publication" on Circuit Court of Appeals rulings indicates a denial of the rights guaranteed to American Citizens by the U.S. Constitution, statutes enacted by Congress, and U.S. Supreme Court decisions.

2. Whether a compliant can be dismissed before discovery can be completed.

3. Whether the Plaintiffs property was taken by uses of defective search and seizure warrant using misapplied statutes and regulations, and misuse of the legal process .

4. Wheather a constitutional question is frivolous.

5. Wheather Government Employees, Officers and agents can seize property without proof of criminal activity.

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OPINION BELOW

The decision of the United States Court of Appeals for the Fourth Circuit form which certiorari is sought is "unpublished". See Appendix A. This opinion was issued on August 5, 1998. The jurisdiction of this Honorable Court is 28 USC § 1254(1).

The Plaintiffs sued officers, employees and agents of the United States Government for taking property without Due Process of Law in violation of the Plaintiffs Constitutional Rights. The specific portion of the constitution and statutes relevant to this petition are:

Article 1 § 10
Article 3 § 2
Amendment 1
Amendment 4
Amendment 5
Amendment 7
Amendment 14
28 U.S.C. 1331

STATEMENT OF THE CASE

The action originated in the **District Court Of The United States Of America, In And For The Western Division Of North Carolina Charlotte Division** case number CA-97-355-3-P (W.D.N.C. Nov. 21, 1997). For violating the unalienable U.S. Constitutional Rights of the plaintiffs by the defendants. Requesting declaratory relief, and; any other proper relief.

The gist of the action was brought for the return of property taken without due process of law. The main compliant was the taking of $342,692.43 from 14 trust accounts, these said accounts were seized without proper 4th Amendment warrant and the statute plus regulations do not apply to the plaintiffs.

REASON FOR GRANTING THE WRIT

PROPOSITION I

"Unpublished" and "Not for Publication" opinions routinely issued by Federal Circuit Courts of Appeals appear to allow those courts to issue rulings based on political considerations rather than those based on the U.S. Constitution, statutes enacted by Congress, and Supreme Court precedent. "Unpublished" and "Not for Publication" opinions allow the Appeals Court Judges to issue opinions without addressing the legal issues placed before the court.

Over a century ago every federal judge knew that it was his duty to administer the law according to its best understanding, reguardless of the consequences. **U.S. v. Goggin** 1 Fed 49 (E.D. Wisc. 1880).

When our Republic was still in its infancy, this Honorable Court stated:

One of the greatest objects of government is to protect life, liberty, and property of individual citizen. **Chisholm v. Georgia** 2 Dall 419 (1793).

A dozen years before the way our government and legal system was supposed to go was determined at Yorktown and Saratoga. One of the major reason the people fought that War [Revolutionary War] was to extricate themselves from the English legal system.

Centuries ago the rapid rise of supremacy of the Court of Common Pleas in England had the practical effect that property in land was ultimately whatever the court of Common Pleas should adjudge. The Court of Common Pleas then decided that it could not be bothered with affairs of peasants (i.e. the common people). To say that peasants property rights could not be defended in the Court of Common Pleas was almost immediately recognized as equivalent to saying that he had no property rights at all. This was the accepted theory from the fourteenth century onwards. **Concise History of Common Law** by Plucknett 5th ed., Little, Brown, & Co. 1956 p. 310.

The English legal system continued to deteriorate after our Revolutionary War. At the beginning of the nineteenth century

justice had become dilatory, expensive, uncertain, and remote. To the rich it was a costly lottery: to the poor a denial of right, or certain ruin. The class who profited the most were the lawyers. **Concise History**, p. 73

First, the actions and inactions of the Judges of The Fourth Circuit of Appeals in their 86 word opinion **Appendix A** which did not address any of the legal claims made by the Plaintiffs. Gives cause to equate the judicial system of the English Court of Common Pleas since the compelling fact that property was taken without due process of law. The Fourth Circuit Court is stating that the Plaintiffs have no right to use the court system for redress of grievance, and the judicial system itself is denying the plaintiffs the right to seek judicial remedy for property taken without full Due Process of Law an Unalienable United States of America Constitutional Right.

Second, the Plaintiffs Appeal Brief Presented to the Fourth Circuit Court of Appeals Appendix B detailed 41 legal precedents which included 26 Ruling made by this Honorable Court ***The Supreme Court Of The United States of America***. The lower courts are ignoring the legal precedents and not addressing the legal claims of the Plaintiffs in this matter, the judges in the lower courts are showing contempt for the Supreme Court of the United States of America. The District Court and the Fourth Circuit Court of Appeals had apparently decided they don't have time for the affairs of peasants better known as **The Citizens of the United States of America**.

PROPOSITION II

The Plaintiffs complaint should not have been dismissed before discovery was completed.

In the Plaintiffs case described herein there was absolutely ***NO DISCOVERY*** allowed so that the merits of the action could be fully determined.

A court cannot fully determine weather a motion to dismiss is well grounded until discovery is completed. **E.E.O.C. V KWMT Inc.**, 718 F.Sup 1425, 1428 (N.D. Iowa 1988) see; Appendix B-4&15. E.E.O.C. is a published case directly contrary to both the district court's ruling in the Plaintiffs case and the unpublished

ruling of the Fourth Circuit Court of Appeals violates mandates issued by this Honorable Court and its own prior decisions.

PROPOSITION III

The Plaintiffs property was taken by uses of defective search and seizure using misapplied statutes and regulations, and the misuse of the legal process denied the plaintiffs the unalienable Constitutional Right of Due Process of Law.

The law on defective warrants is well known: the United States Supreme Court and the Circuit Courts have made numerous rulings on protecting the property rights of the citizens. The circuit court and the district court have ignored the rulings of courts superior to them in dealing with the Plaintiffs.

Search [seizure] warrant[s] containing false statements made deliberately or out of reckless disregard for the truth, which is essentially necessary for a court to find probable cause, makes the government's case a nullity. ***U.S. v. Wold 979 F2d 632 (8th Cir. 1992)*** see; Appendix B-16

The Fourth Amendment protects an individual's reasonable expectation of privacy from unauthorized government intrusion. ***U.S. v. Herrold 962 F2d 1131 (3rd Cir. 1992)*** see; Appendix B-16. The warrants at issue in the complaint come from "**the fruit of the poison tree**" and is, therefore constitutionally deficient. With a warrant that fails constitutionally, any evidence seized is unusable by the government and all property should be returned. All the Defendants knew the warrants were defective.

Had the lower court zealously guarded the rights of the Plaintiffs and allowed discovery to proceed, these facts would have come to light and the lower court case probably have bee settled pre-trial. Instead, The lower court ignored the law arguments in the pleadings, supported by facts in hand that would have been brought forth in discovery. The dismissal of the Complaint is in fact denying the Plaintiffs their constitutionally guaranteed **"DAY IN COURT"** [right to due process of law].

The affidavit(s) used to support the search/seizure warrant(s) we defective in that the affidavit were not specific, and; the statutes along with the implementing regulations did not apply. Thereby making the warrant(s) in question constitutionally defective.

Plaintiffs filed the complaint for taking property without due process of law, misuse use of legal process, abuse of authority, violations of Unalienable Constitutional Rights, depravation of constitutional rights under color of law and color of office, conspiracy. The relief demanded in the complaint is for the return of the property, punitive damages, and declaratory relief.

Defendants took the said property by the use of Federal Rules of Criminal Procedure Rule 41 is a violation of the Due Process of Law clause of the 5th Amendment rights of the petitioner. Plaintiffs acknowledges that Congress gave the United States Supreme Court the power to make rules for the district courts of the United States [Public No. 416 June 19, 1934 and Public No.675 June 29, 1940] see; Appendix B-5. However Congress did not give the power/authority to create and/or use any rule of court that would violate the Unalienable Constitutional Rights of any citizen. "The Constitution of the United States is a law for rulers and people, equally in war and peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances." ***L.N. Dantzler Lumber Co. v. Texas & P.R. Co., 119 Miss. 328, 80 So. 7770, 4 A.L.R. 1669*** see; Appendix B-6.

There was in fact a misuse of the rules of court to deprive the Plaintiffs of their 4th Amendment Unalienable Constitutional Rights. The Unconstitutional conduct of the Defendants was/is under color of law, color of authority, color of office which deprive the Plaintiffs of their property in violation of the Fourth Amendment of the constitution of the united States of America.

> "The Fourth Amendment provides that: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated" In Bell v. Hood, 327 US 678, 90 L.Ed 939, 66 S.Ct. 773, 13 ALR2nd 383 (1946), we reserved the question weather violation of that command by a federal agent acting under color of authority gives rise to a cause of action for damages consequent upon his unconstitutional conduct. Today we hold that it does." ***BIVENS v. SIX UNKNOWN NAMED AGENTS OF FEDERAL BUREAU OF NARCOTICS, 403 US 388, 389, 29 L.Ed 2nd 619, 91 S.Ct. 1999*** see; Appendix B-6

Plaintiffs received no Procedural Due Process before the property was taken

> "Procedural due process imposes constraints on governmental decisions which deprive individuals of "liberty, and loss of property of the individual within the meaning of the Fourth, Fifth, and Fourteenth Amendments." ***Mathews v. Eldridge, 424 U.S. 319, 332 (1976).*** see; Appendix B-6

This Honorable Court has ruled on the use of statutes, regulations, rules of court that do not apply to the Plaintiffs and are a violation of the Unalienable Constitutional rights of the Plaintiffs:

> "Where rights are secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." ***Miranda v. Arizona 384 US 436 at 491, 16 L.Ed 2nd 694 at 733, 86 S.Ct. 1602*** see; Appendix B-6

Further the said Statutes the respondents are using either do not have implementing regulation or the implementing regulation does not apply to the Petitioner. The Defendants know the statutes/regulations do not apply to the Plaintiffs and the application of said statutes/regulation are unconstitutional when applied to the Plaintiffs.

"An administrative regulation, of course, is not a "statute". While in practical effect regulations may be called "little laws"... Here a statute is not complete by itself,. Once promulgated, these regulations, called for by the statute itself have the force of law,... The result is that neither the statute nor the regulation are complete without the other, and only together do they have any force" ***US v. Mersky 361 US 437, 438***,. see; Appendix B-7

"These appeals present questions concerning the constitutionality of the so-called Bank Secrecy Act of 1970, and the implementing regulations promulgated thereunder by the Secretary of the Treasury.... Because it has a bearing on our treatment of some of the issues raised by the parties, we think it important to note that the Act's civil and criminal penalties attach only upon violation of regulations promulgated by the Secretary; if the Secretary were to do

nothing, the Act itself would impose no penalties on anyone" ***California Bankers Association v. Shultz 416 US 25, 39 L.Ed. 2d 820***. see; Appendix B-7

"Due process requires that penal statutes define criminal offenses with sufficient clarity that an ordinary person can understand what conduct is prohibited. ***Kolender v. Lawson***, 461 US 352, 357, 103 S.Ct 1855, 75 L.Ed2d 903 (1983).... We held that the regulations implementing the Act do not require individuals to inform either their banks or the IRS that they are engaged in multiple but related transactions in order to avoid the CTR filing requirements. Although the relevant statute authorized the Secretary to impose such a duty, his implementing regulations did not due so. Therefore, we held that there was no duty to disclose, and concluded that in the absence of such a duty there could be no conspiracy to defraud the United States. ***US v. Murphy 809 F2d 1427, 1431***. see; Appendix B-7 & 8

The statutes and regulations use for the seizure do not apply to the Petitioner: A) 18 USC 1956 & 981 implementing code is 39 CFR 233 [Postal Service] only deals with property in the custody of the of the postal service, the property was never in the custody of the postal. B) 18 USC 1343 has no implementing regulation therefor it is not law. C) 19 USC 1602 [Customs] does not apply to the Petitioners property.

The Defendants, and; the District Court, and; the Fourth Circuit Court of Appeals failed to follow the Constitution of the United States of America in all dealings with the Plaintiffs, "The Constitution and laws of the United States are the supreme law of the land and every citizen of every state owes obedience, whether in his individual or official capacity." ***John F. Jelke Co. v. Emery, 193 Wis. 311, 214 N.W. 369, 53 A.L.R. 463***. see; Appendix B-8

The Constitution of the united States of America and the Articles of Amendments [Bill of Rights] is a contract the United States of America Government has with the citizens to protect them from over zealous government officers, employees, and, agents. "A bill of rights is in the nature of a classified list of rights of individuals. Blacks Constitutional Law p.9 (1910). It is a charter of liberties for individual." ***Robertson v. Baldwin 165 US 275 (1897)*** see; Appendix B-8

The Defendants had no authority statutory and regulatory authority over the Plaintiffs. The Plaintiffs do not come under any

statutory/regulatory authority passed by congress. Since congress cannot amend the constitution by legislation. The statutes in question are administrative agency private law and the petitioners do not fall under the authority of said statutes since said statutes are a violation of Due Process of Law and the Defendants knew the said statutes do not apply to the Petitioners. "It is basic to our law that an administrative agency may only act within the area of 'jurisdiction' marked out by law. If an individual does not come within the coverage of the particular agency's enabling legislation, the agency is without power to take any action which affects him." ***Endicott v. Perkins, 317 U.S. 501***. "Congress cannot... merely by legislation... amend the constitution." ***United Transport Union v. ICC 891 F2d 908, 915-916 (D.C. App. 1989)*** "Congress possess no power not derived from the constitution." ***State of Nevada v. Watkins 914 F2d 1545, 1552 (9th Cir. 1990)*** "The legislature cannot enact law for accomplishments of objects not instructed to the federal government." ***Linder v. U.S. 268 US 5, 45 S.Ct. 446 (1925).*** see; Appendix B-9

Defendants interfered with the Obligation of Contracts a violation of Article 1 Section 10 "No State shall [Note: The United States Government is a state] ...pass any... Law impairing the obligation of contracts,..." by taking the said property without Due Process of Law. Plaintiffs property taken was from bank accounts that were held by pure trust, pure trusts are private contracts protected by Article 1 section 10 of the constitution and the Bill of Rights, "A Pure Trust Organization is not subject to legislative control." ***Eliot v. Freeman 220 U.S. 178*** see; Appendix B-9

Defendants misuse of the legal process [Abuse of Process] in dealing with the Plaintiffs. Defendants have an ulterior motive in taking the Petitioners property. Defendants can receive an unjust enrichment of up to $25,000.00 for adding to the economy of the United States government see: Title 5 USC 4501 et.seq., 5 USC 3371 et.seq., 5 CFR 870.103, 4 CFR 91.6(B).

Plaintiffs 7th Amendment constitutional rights were violation. Defendants failed to give Petitioner(s) Trial by Jury before taking the said property. "In suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved". The property in question has a value well in excess of Twenty Dollars.

Defendants Interference With Property Trespass To Chattels [see Prosser and Keeton On Torts Fifth Edition pages 67-107}, for the purpose of clarification a violation of the limitations placed upon government pursuant to the Constitution Of The United States of America in particular the Taking of Property in violation of the 4th Amendment, being Deprived Of Life, Liberty or Property without due process of law in violation of the 5th Amendment. Respondant(s) participated in the TRESPASS TO CHATTELS [chattel defined **pursuant Bouvier's Law Dictionary 3rd Revision 1914 page 471** "Every species of property, movable or immovable". see; Appendix B-10

Plaintiffs complained Defendants H. Brent McKnight misused his office and violated he oath of office 28 USC 453 by acting as a rubber stamp for an administrative agency [United States Secret Service]. The actions of H. Brent McKnight were not Judicial in nature but Ministerial. "A judge ceases to sit as a judicial officer because the governing principle of administrative provides that courts are prohibited from substituting their evidence, testimony, record, arguments, and rational for that of the agency. Additionally, courts are prohibited from substituting their judgments for that of the agency. Courts in administrative issues are prohibited from listening to or hearing arguments, presentation or rationale" ***Asis v. U.S. 568 F.2d 284***, ***Endicott, supra 317 U.S. 501***, ***John F. Jelke Co., supra. 193 Wis. 311, 214 N.W. 369, 53 A.L.R. 463***. ***Boyd supra 116 U.S. 616, 635, (1885)***

The Plaintiffs are extremely happy with the laws of the United States of America. The Plaintiffs pray that this Honorable Court will require the lower courts and the defendant [offices, agents, employees of the United States government] to follow the Constitution of the United States of America and the ruling of this Honorable Court in all dealing with the Plaintiffs.

PROPOSITION IV

The Plaintiffs action filed in the district court was based on a constitutional question pursuant to **28 USC 1331 Federal Question** "***The district court shall have original jurisdiction of all civil actions arising under the constitution,...***" the portions of the constitution the plaintiffs used as their constitutional question are Article I § 10, Amendments 1, 4, 5, 7, and 14. The lower court

calling the plaintiffs action frivolous is without merit since there was no explanation as to what made the action frivolous.

The compelling fact that can not and has not been disputed is that property in the amount of $342,692.43 was taken from the Plaintiffs without due process of law. District Court Judge Potter in dismissing the Plaintiffs Constitutional Question with prejudice as frivolous is another indication that the lower courts do not want the citizens complaining about their Unalienable Constitutional Rights. The said dismissal of the Plaintiffs action is a violation of the Plaintiffs First Amendment constitutional right to "petition the government for redress of grievances." This Honorable Court in **California Transport v. Trucking unlimited 404 US 508, 92 S.Ct. 609, 30 L.Ed 2nd 642, 646** see; Appendix B-6&15, "Certainly the right to petition extends to all departments of Government. The right of access to the courts is indeed but on aspect of the right of petition." The district court and the circuit court in this matter is in fact denying the plaintiffs their constitutional and lawful rights to access the courts.

Since the Plaintiffs action is base on a Federal Question arising out of the constitution the Plaintiffs Action can not be frivolous. This Honorable Court has already ruled on this matter also. "A federal question can not be considered frivolous" **Exparte Young 209 US 123, 52 L.Ed 2nd 714, 28 S.Ct. 441 (1908)** see; Appendix B-13. Exparte Young has been restated, reaffirmed, interpreted and quoted in over 61 Appellate Court and Supreme Court decisions, this Honorable Court in 1974 reaffirmed Exparte Young in **Edelman v. Jordan 415 US 651, 39 L.Ed 2nd 662, 94 S.Ct. 1347**. see; Appendix B-13

PROPOSITION V

This Honorable Court in ***U.S. v. Bajakajian 118 S.Ct 2028*** on June 22, 1998 ruled that forfeiture of property is excessive fines where the said property it self was not the product of criminal activity, which is a violation of the excessive fines clause of the Eighth Amendment of the Constitution of the United States of America **"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."**

The Appellants have shown in the above sections of this **PETITION FOR WRIT OF CERTIORARI**, and; The Appeal

Brief to the 4th Circuit Court of Appeals, and; the Original Complaint [omitted for paper reduction] that the United States Governmental employees, officers, do not have any valid law to support the claims of criminal activity. The said defendants in this action perpetrated a FRAUD in seizing the Appellants property hoping to find criminal activity and or fabricating a crime to validate the said seizure.

The United States Attorney along with the named and unnamed United States Government employees/officer/agents has gone to extreme lengths to cover the facts that they did not have the valid law in the said seizure. These so-called public servants have cause an extreme hardship on the Appellants by denying them their day in court and access to their property. This of course in nothing more than **OBSTRUCTION OF JUSTICE** on the part of the United States Governmental Employees, Officers, agents, and; is **FRAUD ON THE COURT "A scheme to interfere with judicial machinery performing task of impartial adjudication," and; ACTUAL OR CONSTRUCTIVE FRAUD "...what he knows to be a cheat or deception"** ***Black Law Dictionary 6th ed. Page 661***. Also the so-called public servants know the laws they uses to obtain a seizure warrant do not apply to the appellants and/or the legal situation involved.

It is plain to see that this Honorable Courts ***"The Supreme Court Of These United States of America"*** rulings have been ignored by the District Court and the Fourth Circuit Court of Appeals.

Dated this February 26, 1999

Eddie Bradford: Lee

William Sanford; Gadd

Kathy Carole: Moore

CERTIFICATE OF SERVICE

This is to certify that I have on this _____ day of _____ 1998 placed a true and correct copy of the foregoing PETITION FOR WRIT OF CERTIORAI in the United States mail, postage prepaid, addressed to:

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Solicitor general of the United States
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Dept of Justice
10th Street & Constitution Ave. N.W.
Washington, D.C. 20530

By _____

Appendix A

UNPUBLISHED

United States Court of Appeals
For the Forth Circuit

Eddie Bradford; Lee et.al.

Plaintiffs-Appellants

Versus

David A. Mcclellan

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Robert D. Potter, Senior District Judge. (CA-97-355-3-P)

Submitted: July 22, 1998.... Decided: August 6, 1998

Before ERVIN, MICHAEL, and MOTZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

PER CURIAM:

Appellants appeal the district court's order granting defendants' motions to dismiss their civil complaint alleging that defendants violated constitutional rights by seizing their assets without a proper warrant. We have revied the record and the district courts opinion and find nor reversible error. Accordingly, we affirm on the reasoning of the district court. Lee v. McClellan, No.Ca-97-355-3-P (W.D.N.C. Nov. 21, 1997). We dispense with oral arguments because the facts and legal contentions are adequately presented in the materials before the court and arguments would not aid the decision process.

AFFIRMED

Submitted: July 22, 1998 ..... Decided: August5, 1998

In The
United States Court of Appeals
For The Fourth Circuit

Record Number: 98-1491

Eddie Bradford: Lee
William Sanford: Gadd
Kathy Carole: Moore
Flax Trust
Rainbow Trust
D&J Trust
Highlander Trust
Road To Freedom Trust
Tree Trust
HFS Trust
Cornerstone Trust
Petitioners-Appellants

Vs.

David A. McClellan
Becky Rice
Dan Paulson
Julia Mueller
H. Brent McKnight
William J. Williamson
Wachovia Bank of North Carolina
Respondant(s)-Appellee

TABLE OF AUTHORITIES

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Article I § 10
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Amendment 7
Amendment 14

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** Bell V. Hood, citation omitted
** Bivens V. Six Unknown Named Agents 403 US 388
** Boyd v. U.S. 116 US 616
** California Bankers Ass. v. Shultz 416 US 25
** California Transport v. Trucking 404 US 508
Chu v. Griffith 771 F.2d 79, 81
Cleavinger v. Saxner citation omitted
** Dennis v. Sparks 449 US 193
** Dennis v. United States 71 S.Ct. 857
** Edelman v. Jordan 415 US 651
** Eliot v. Freeman 220 US 178
** Endicott v. Perkins, 317 US 501
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** Kolender v. Lawson 416 US 25
** Lileber v. Health Services 108 S.Ct.2194
** Linder v. U.S.268 US 5, 45 S.Ct. 446
L.N. Dantzler v. Texas & P.R. Co. 119 Miss 328
** Mathews v. Eldridge 424 US 319
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** Miranda v. Arizona 384 US 436, 86 S.Ct.1602
** Mireles v. Waco 502 US 9
** Mitchum v. Foster 92 S.Ct.2151
** Moore v. Sims 99 S.Ct. 2377,238
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Ward v. Village of Monroeville citation omitted

STATUTES, REGULATIONS AND F.R.C.P.

4 CFR § 91.6(B)
5 CFR § 870.103
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5 USC § 4501 et.seq.
18 USC § 981
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18 USC § 1956
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28 USC § 1331
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U.S. Code Cong. & Admin News

STATEMENT OF SUBJECT MATTER JURISDICTION AND BASIS FOR APPELLATE JURISDICTION

The case at issue in this appeal was filed **In the district court of the united States of America**, western district of North Carolina, Charlotte division on the 6th day of June 1997 alleging employees, officers, agents of the United states government took property without due process of law. The complaint asserts violations of the Constitution of the united States of America, Article of Amendments [Bill of Rights]

1st, 4th, 5th, 7th. Jurisdiction of the **district court of the united States of America**, is pursuant to Article III section 2 of the Constitution of these united States of America "*The judicial Power shall extend to all cases, in Law and Equity, arising under this constitution*", and, 28 USC 1331 "*civil action arising under the Constitution*", and, 28 USC 1357 "*Injuries under Federal laws*", and, 28 USC 1391 "*Venue generally*". The case was dismissed with prejudice and without cause.

The appellate jurisdiction of this court is pursuant to 28 USC 1291 as an appeal from a final decision of Judge Potter of the **district court of the united States of America** and, Amendment 1 of the Constitution "*to petition Government for redress of grievances*". The district court Order being appealed was entered November 18th, 1997, a petition pursuant to FRCP Rule 60 was filed with in 10 days, and a timely Notice of Appeal was mailed via certified mail #711132099 on 26 day of December 1997 the clerk of the court received it for filing on 30th day of December 1997.

STATEMENT OF ISSUE

The issue in this appeal is weather Judge Robert D. Potter abused his discretion in dismissing with prejudice the claims of the Petitioners/Appellants against Respondant(s)/Appellee(s) [employees, officers, agents of the United States government] for taking property [$342,692.43] without Due Process of Law.

The final Order of Judge Robert D. Potter ordered the dismissal of the case without first allowing the discovery process to determine if Petitioners/Appellants have a good cause to proceed in this action. "A Judge cannot fully determine whether a defendants motion to dismiss is well grounded until discovery is completed, ***E.E.O.C. v. KWMT Inc. 718 F.Supp 1425, 1428 (N.D. Iowa 1988)***.

At issue is weather Judge Robert D. Potter abused his discretion by denying Petitioners/Appellants access to the courts, 1st Amendment Right "to petition government for

redress of grievance" to have the property returned that was taken by Respondants/Appelees. "Certainly the right to petition extends to all departments of the Government. The right of access to the courts is indeed but one aspect of the right of petition." ***California Transport v. Trucking Unlimited 404 US 508, 92 S.Ct. 609 30 L.Ed2nd 642,646***

At issue is Judges Robert D. Potters abuse of his discretion and a violation of the Judges Oath 28 USC 453 by the dismissal of Petitioners/Appellants action against the Respondants/Appellees raises and issue of BAD FAITH ***Moore v. Sims 99 S.Ct. 2377, 2378 (1979)***. Judge Robert D. Potter by his oath is supposed to protect and defend the rights of the citizens, Judge Potter is failing to do his duty owed to the citizens "it is the duty of the courts to be watchful for the constitutional rights of the citizens, against any stealthy encroachment thereon." ***Boyd v. U.S. 616, 635, (1885)***

STATEMENT OF THE CASE AND ISSUES

Petitioners/Appellants filed the complaint for taking property without due process of law, misuse use of legal process, abuse of authority, violations of Unalienable Constitutional Rights, depravation of constitutional rights under color of law and color of office, conspiracy. The relief demanded in the complaint is for the return of the property, punitive damages, and declaratory relief.

Respondant(s)/Appellee took the said property by the use of Federal Rules of Criminal Procedure Rule 41 is a violation of the Due Process of Law clause of the 5th Amendment rights of the petitioner. Petitioner acknowledges that Congress gave the United States Supreme Court the power to make rules for the district courts of the United States [Public No. 416 June 19, 1934 and Public No.675 June 29, 1940]. However Congress did not give the power/authority to create and/or use any rule of court that would violate the Unalienable Constitutional Rights of any citizen.

"The Constitution of the United States is a law for rulers and people, equally in war and peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances." ***L.N. Dantzler Lumber Co. v. Texas & P.R. Co., 119 Miss. 328, 80 So. 7770, 4 A.L.R. 1669.***

Petitioners/Appellants complaint alleges a misuse of the rules of court to deprive the Petitioner(s)/appellant(s) of their 4th Amendment Unalienable Constitutional Rights. The Unconstitutional conduct of the Respondant(s)/Appellee(s) was/is under color of law, color of authority, color of office to deprive the petitioners of their property in violation of the Fourth Amendment of the constitution of the united States of America. "The Fourth Amendment provides that: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated" In Bell v. Hood, 327 US 678, 90 L.Ed 939, 66 S.Ct. 773, 13 ALR2nd 383 (1946), we reserved the question weather violation of that command by a federal agent acting under color of authority gives rise to a cause of action for damages consequent upon his unconstitutional conduct. Today we hold that it does." ***BIVENS v. SIX UNKNOWN NAMED AGENTS OF FEDERAL BUREAU OF NARCOTICS, 403 US 388, 389, 29 L.Ed 2nd 619, 91 S.Ct. 1999***

Petitioners/Appellants complaint alleges violation of Procedural Due Process, "Procedural due process imposes constraints on governmental decisions which deprive individuals of "liberty, and loss of property of the individual within the meaning of the Fourth, Fifth, and Fourteenth Amendments." ***Mathews v. Eldridge, 424 U.S. 319, 332 (1976).***

Petitioners/Appellants compliant alleges the use of statutes, regulations, rules of court that do not apply to the Petitioners/Appellants and are a violation of the Unalienable Constitutional rights of the Petitioners/Appellants "Where rights are secured by the Constitution are involved,

there can be no rule making or legislation which would abrogate them." ***Miranda v. Arizona 384 US 436 at 491, 16 L.Ed 2nd 694 at 733, 86 S.Ct. 1602***

Further the said Statutes the respondents are using either do not have implementing regulation or the implementing regulation does not apply to the Petitioner. The Respondant(s)/Appellee(s) know the statutes/regulations do not apply to the Petitioners and the application of said statutes/regulation are unconstitutional when applied to the Petitioner. "An administrative regulation, of course, is not a "statute". While in practical effect regulations may be called "little laws"... Here a statute is not complete by itself,. Once promulgated, these regulations, called for by the statute itself have the force of law,... The result is that neither the statute nor the regulation are complete without the other, and only together do they have any force" ***US v. Mersky 361 US 437, 438***,. "These appeals present questions concerning the constitutionality of the so-called Bank Secrecy Act of 1970, and the implementing regulations promulgated thereunder by the Secretary of the Treasury.... Because it has a bearing on our treatment of some of the issues raised by the parties, we think it important to note that the Act's civil and criminal penalties attach only upon violation of regulations promulgated by the Secretary; if the Secretary were to do nothing, the Act itself would impose no penalties on anyone" ***California Bankers Association v. Shultz 416 US 25, 39 L.Ed. 2d 820***. "Due process requires that penal statutes define criminal offenses with sufficient clarity that an ordinary person can understand what conduct is prohibited. ***Kolender v. Lawson***, 461 US 352, 357, 103 S.Ct 1855, 75 L.Ed2d 903 (1983).... We held that the regulations implementing the Act do not require individuals to inform either their banks or the IRS that they are engaged in multiple but related transactions in order to avoid the CTR filing requirements. Although the relevant statute authorized the Secretary to impose such a duty,

his implementing regulations did not due so. Therefore, we held that there was no duty to disclose, and concluded that in the absence of such a duty there could be no conspiracy to defraud the United States. ***US v. Murphy 809 F2d 1427, 1431***.

Further the statutes and regulations use for the seizure do not apply to the Petitioner: A) 18 USC 1956 & 981 implementing code is 39 CFR 233 [Postal Service] only deals with property in the custody of the of the postal service, the property was never in the custody of the postal. B) 18 USC 1343 has no implementing regulation therefor it is not law. C) 19 USC 1602 [Customs] does not apply to the Petitioners property.

Petitioners/Appellants complaint alleges that the Respondant(s)/appellee(s) failed follow the Constitution of the United States of America in all dealings with the Petitioners/Appellants, "The Constitution and laws of the United States are the supreme law of the land and every citizen of every state owes obedience, whether in his individual or official capacity." ***John F. Jelke Co. v. Emery, 193 Wis. 311, 214 N.W. 369, 53 A.L.R. 463***.

Further the Constitution of the united States of America and the Articles of Amendments [Bill of Rights] is a contract the Unites States of America Government has with the citizens to protect them from over zealous government officers, employees, and, agents. "A bill of rights is in the nature of a classified list of rights of individuals. Blacks Constitutional Law p.9 (1910). It is a charter of liberties for individual." ***Robertson v. Baldwin 165 US 275 (1897)***

Further Petitioners/Appellants complaint alleges the Respondant(s) had no authority over the Petitioners. The petitioners do not come under any statutory/regulatory authority passed by congress. Since congress cannot amend the constitution by legislation. The statutes in question are administrative agency private law and the petitioners do not fall under the authority of

said statutes since said statutes are a violation of Due Process of Law and the Respondant(s)/Appellee(s) knew the said statutes do not apply to the Petitioners. "It is basic to our law that an administrative agency may only act within the area of 'jurisdiction' marked out by law. If an individual does not come within the coverage of the particular agency's enabling legislation, the agency is without power to take any action which affects him." ***Endicott v. Perkins, 317 U.S. 501***. "Congress cannot... merely by legislation... amend the constitution." ***United Transport Union v. ICC 891 F2d 908, 915-916 (D.C. App. 1989***) "Congress possess no power not derived from the constitution." ***State of Nevada v. Watkins 914 F2d 1545, 1552 (9th Cir. 1990)*** "The legislature cannot enact law for accomplishments of objects not instructed to the federal government." ***Linder v. U.S. 268 US 5, 45 S.Ct. 446 (1925).***

Further Respondant(s)/Appellee(s) interfered with the Obligation of Contracts a violation of Article 1 Section 10 "No State shall [Note: The United States Government is a state] ...pass any... Law impairing the obligation of contracts,..." by taking the said property without Due Process of Law. Petitioners/Appellants complaint alleges the property taken was from bank accounts that were held by pure trust, pure trusts are private contracts protected by Article 1 section 10 of the constitution and the Bill of Rights, "A Pure Trust Organization is not subject to legislative control." ***Eliot v. Freeman 220 U.S. 178***

Further Petitioners/Appellants alleges Respondents have misused the legal process [Abuse of Process] in dealing with the Petitioners. Respondant(s)/Appellee(s) have an ulterior motive in taking the Petitioners property. Respondant(s)/Appellee(s) can receive an unjust enrichment of up to $25,000.00 for adding to the economy of the United States government see: Title 5 USC 4501 et.seq., 5 USC 3371 et.seq., 5 CFR 870.103, 4 CFR 91.6(B).

Petitioners/Appellants complaint alleges 7th Amendment violation. Respondants(s) failed to give Petitioner(s) Trial by Jury before taking the said property. "In suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved". The property in question has a value well in excess of Twenty Dollars.

Petitioners/Appellants Interference With Property Trespass To Chattels [see Prosser and Keeton On Torts Fifth Edition pages 67-107}, for the purpose of clarification a violation of the limitations placed upon government pursuant to the Constitution Of The United States of America in particular the Taking of Property in violation of the 4th Amendment, being Deprived Of Life, Liberty or Property without due process of law in violation of the 5th Amendment. Respondant(s) participated in the TRESPASS TO CHATTELS [chattel defined **pursuant Bouvier's Law Dictionary 3rd Revision 1914 page 471** "Every species of property, movable or immovable".

Petitioners/Appellants alleges Respondant/Appellee H. Brent McKnight misused his office and violated he oath of office 28 USC 453 by acting as a rubber stamp for an administrative agency [United States Secret Service]. The actions of H. Brent McKnight were not Judicial in nature but Ministerial. "A judge ceases to sit as a judicial officer because the governing principle of administrative provides that courts are prohibited from substituting their evidence, testimony, record, arguments, and rational for that of the agency. Additionally, courts are prohibited from substituting their judgments for that of the agency. Courts in administrative issues are prohibited from listening to or hearing arguments, presentation or rationale" ***Asis v. U.S. 568 F.2d 284***, ***Endicott, supra 317 U.S. 501***, ***John F. Jelke Co., supra. 193 Wis. 311, 214 N.W. 369, 53 A.L.R. 463***. ***Boyd supra 116 U.S. 616, 635, (1885)***

STATEMENT OF FACTS

This appeal is centered around Judge Robert D. Potter's Judgment and Order dismissing with prejudice the Petitioners civil action dated November 18, 1997. Judge Potter made his ruling without the petitioners being able to start much less complete the discovery process pursuant to F.R.C.P. Rule 26-37. The basis of Judges Potters ruling is all the Respondant(s)/Defendant(s) are immune from civil action no matter what wrongs a committed against the Petitioner(s).

The second dispute is that Judge Potter is not requiring the Attorneys for the Respondant(s) to follow the Federal Rules of Civil Procedure to wit: (A) Respondant(s) William J. Willimson and Wachovia Bank filed a motion to dismiss on August 8th, 1997 and; (B) Respondant(s) McKnight, Rice, Paulson, Mueller, McClelland filed a motion to dismiss on September 5th, 1997. Judge Potter knows that a motion to dismiss is not an answer to the complaint as required pursuant to FRCP Rule 8 and a failure to answer is an Effective Failure To Deny allegations FRCP Rule 8(d) is an admission to all the Petitioners claims.

The third issue is the Petitioners filed petition to strike Respondant(s) motion to dismiss on August 14th, September 17th, 1997 detailing numerous Supreme Court of the United States rullings as to the Petitioners legal position. The Respondant(s) failed to answer and/or dispute the Petitioners legal position. Judge Potter also failed to address any of the Petitioner(s) legal issues in the order & judgment he issued.

The fourth issue is the Petitioner(s) filed a Petition To Vacated Judge Potter's Order & Judgement pursuant to F.R.C.P. Rule 60(b), F.R.C.P. Rule 9(b) on November 26th, 1997 detailing numerous legal decisions. Judge Potters denied the motion December 5th, 1997 without disputing or addressing any of the legal issues.

SUMMARY OF ARGUMENT

Judge Potter abuses his authority and discretion by dismissing the Petitioners action. Judge Potter quoted case that did not apply in this case. Petitioners-Appellants action is not

frivolous and the action does state a claim upon which relief can be granted. Judge H. Brent McKnight is not immune in an action asking for Declaratory Judgment.

ARGUMENT I: Did The Lower Court Abuse It's Discretion By Granting Judge H. Brent McKnigth Judicial Immunity?

In the order issued by Judge Potter dismissing the action aginist Respondent-Apellee, Judge H. Brent McKnight is attempting to grant Judge Mcknight Judicial Immunity. Judge Potter quoted ***Stump v. Sparkman 423 US 349, 356-57(1978)***, and; ***Pierson v. Rae, 386 US 547 1967***, and; ***Chu v. Griffith, 771 F2d 79, 81 (4th Cir. 1985***. The cases Judge Potter quoted only grants Judicial Immunity for Judges from liability for money damages for judicial acts.

Petitioners-Appellants agree a judge is immune from liability for money damages for judicial acts when the judge has jurisdiction over the matter in dispute Judge Potter in his order could have also quoted ***Mireles v. Waco 502 US 9 (1991), and; Forrester v. White 484 US 219 (1988), Cleavinger v. Saxner, 474 US 193 (1985), and; Dennis v. Sparks 449 US 24 (1980)*** however not one of these cases grant a judge judicial immunity from **DECLAROTORY RELIEF** to determine the rights of the parties involved.

It has not be determined if H. Brent McKnight was acting judicially or ministerially. If it is determined that McKnight was acting judicially he of course would be immune from liability of paying monetary damages, McKnight however would not be immune from declaratory relief.

ARGUMENT II: Did The Lower Court Abuse It's Discretion By Declaring The Appellants Action Frivolous, And; Dismissing The Complaint Before The Respondent Answered, And; Before Discovery Was Completed?

The Petitioners-Appellants filed the action pursuant to a constitutional question [28 USC § 1331] in **GOOD FAITH** asking for the lower court to declare the constitutional rights of the parties and return the property taken without due process of law. The Petitioner-Appellants have endeavored to use case law rulings of the Supreme Court of the United States of America that applies to the situation in controversy. On the other hand Judge Potter is acting in **BAD FAITH** by using his position to help protect a fellow government employees namely Judge H. Brent Mcknight from answering the said compliant by quoting case law that is irrelevant, off point, and absolutely does not apply.

The Petitioner-Appellants have noticed that any time a non-lawyer files an action against a government agency or official the judges assigned to the cases call the complaint frivolous without showing any fact & law to base their opinion on thereby dismissing actions without cause. According to the ***Black's Law Dictionary 6th Edition Page 668 "Frivolous: of little weight or importance"***. According to Judge Potters order(s) he is saying the *Constitution of the United States of America* and case law ruling of the *Supreme Court of the United States of America* are Frivolous, and, The Petitioner-Appellants do not believe Judge Potter has the power, authority or discretion to make such a determination and, The Petitioner-Appellants are absolutely sure that the Justices of the Supreme Court of the United States of America would agree.

The civil action on appeal was/is based upon a constitutional question under the Federal Question Statute 28 USC 1331 "The district court shall have original jurisdiction of all civil actions arising under the constitution". The Supreme Court has ruled that "A Federal Question can not be considered frivolous" ***Exparte Young 209 US 123, 52 L.Ed 714, 28 S.Ct 441 (1908)***. The Supreme Court has reaffirmed, restated and interpreted *Exparte Young* in ***Edelman v. Jordan 415 US 651, 39 L.Ed2d 662, 94 S.Ct. 1347*** allowing

for Declaratory and Injunctive Relief. The Petitioner-Appellants wish to remind this Honorable Court that an appeals court such as the Fourth Circuit Court of Appeals is required to abide by case law ruling of the Supreme Court of the United States of America, "And of course, a court of appeals cannot overrule the U.S. Supreme Court." ***Kitowski v. U.S. 931 F2nd 1226, 1529 (11th Cir. 1991)***.

As the legislative history of 28 USC § 471, The Judicial Improvements Act of 1990, demonstrates: "The purpose of this legislation is to promote for all citizens—rich or poor, individual or corporation, plaintiff or defendant—the just, speedy and inexpensive resolution of civil disputes in our Nation's Federal courts." ***U.S. Code Cong. & Admin News, pg 6804 (1990)***

"It is the duty of the federal courts to interpret federal legislation in a manner **not inconsistent** with the demands on the Constitution." ***Dennis v. United States 71 S.Ct. 857, 863 (1951)***

"The Constitution is a written instrument. As such it's meaning does not alter. That which it meant when adopted it means now." ***South Carolina v. United States 26 S.Ct. 110,111, (1905)***. "...in other words, the Constitution ought to be preferred to a statute, the intention of the people to the intention of their agents..." ***Hamilton, The Federalist No 78, May 28, 1788.***

Hopefully, Hamilton's observation just quoted would likewise extend to judicial rulings.

Abuse of discretion is not a complex issue. It is well settled that court decisions cannot overcome the plain language of the Constitution. The lower court's arbitrary dismissal, with no hearing on any merits, without the respondent filing an answer, without the discovery process being begun, much less completed, certainly can be nothing less than an abuse of discretion.

There appears to be an ever increasing tendency in the Federal Courts to simply ignore the Complaints of every-day citizens. The rich and the powerful can afford the high-priced,

politically connect "legal talent" to get their claims before a jury. As Senator Joseph Biden said during the formation of 28 USC § 471 et.seq. supra, "The courthouse door is closed to the American People". As this action so amply demonstrates.

The federal judiciary, since 1990, unrestrained and undisciplined by Congress, has plainly ignored the "Bill or Rights" numerous statutes passed by Congress and the will of the people, as the dismissal, without any sort of hearing, of the Petitioner-Appellants Complaint. Judge Potter had no way of determining the merits of the civil action without the respondents filing an answer and the discovery process being completed. ***E.E.O.C. v. KWMT Inc. supra***.

Federal judges are required to take necessary steps to maintain public confidence in the impertiality of the judiciary. ***Lileber v. health services Acquisition Corp. 108 S.Ct. 2194, 2203 (1988)***. The Petitioner-Appellants have lost all faith in the federal judiciary due to the without-a-hearing dismissal by Judge Potter of their complaint for declaratory relief to protect their Unalienable Constitutional Rights.

This action illustrates an increasing tendency on the part of the federal courts to abrogate their solemn responsibilities to protect and preserve the constitutional and statutory rights of Americans by the application and mis-application of judicial doctrine in place of statute law enacted by Congress and the plain wording of the Constitution of These United States of America. It is not the function of the federal courts to protect federal bureaucrats and/or federal judges.

"A federal judge violates his oath of office if he deprives a citizen of constitutional rights. ***Adamson v. C.I.R. 745 F.2d 541, 546 (9th Cir. 1984)***. "One of thoes rights is access to the courts." ***Messers v. Fair 752 F.Supp. 48, 49 (D.Mass. 1990) see also Californa Transport v. Trucking Unlimited, supra***. It should also be noted at this time that the actions of Judge Potter

could very well be an indication of a possible mental disability pursuant to 28 USC § 372(c)(1), he has definitely by the without-a-hearing dismissal of The Petitioner-Appellants civil action shown a bias and prejudice in favor of the Respondant-Appellee.

An important purpose for access to the federal courts centers around the circumstances similar to this action. The Supreme Court of These United States Of America made some observations about the general situation, drawing in part from recalling excesses in our nations past: *"Sheriffs having eyes to see, see not; judges having ears to hear, hear not; witnesses conceal the truth or falsify it, grand and petit juries act as if they might be accomplices… [A]ll the apparatus and machinery of civil government skulk away as if government and justice were crimes and feared detection. Among the most dangerous things an injured party can do is appeal to justice."* ***Mitchum v. Foster, 92 S.Ct. 2151, 2161 (1972)***

ARGUMENT III: Did The Lower Court Allow Property to be taken With A Constitutionally Defective Search And Seizure Warrant?

The law on defective warrants is well known: Search [seizure] warrant[s] containing false statements made deliberately or out of reckless disregard for the truth, which is essentially necessary for a court to find probable cause, makes the government,s case a nullity. ***U.S. v. Wold 979 F2d 632 (8th Cir. 1992)***

The Fourth Amendment protects an individual's reasonable expectation of privacy from unauthorized government intrusion. ***U.S. v. Herrold 962 F2d 1131 (3rd Cir. 1992)***. Petitioner/Appellants alleges that the warrants ant issue in the complaint come from **"the fruit of the poison tree"** and is, therefore constitutionally deficient. With a warrant that fails constitutionally, any evidence seized is unusable by the government and all property should be returned. All the Respondant(s)/Appellee(s) knew the warrants were defective.

Had the lower court zealously guarded the rights of the Petitioner/Appellant and allowed discovery to proceed, these facts would have come to light and the lower court case probably have bee settled pre-trial. Instead, The lower court ignored the law arguments in the pleadings, supported by facts in hand that would have been brought forth on discovery. The dismissal of the Complaint is in fact denying the Petitioner(s)/Appellant(s) their constitutionally guaranteed **"DAY IN COURT"**.

Petitioner(s)/Appellants allege that the affidavit(s) used to support the search/seizure warrant(s) we defective in that the affidavit were not specific, and; the statutes along with the implementing regulations did not apply. Thereby making the warrant(s) in question constitutionally defective.

ARGUMENT IV: Did The Lower Court Deny Plaintiff's Their Rights By Way of Judicial Construction?

Judicial construction is so widespread today, it is doubtful the Framer's of the Constitution of These United States of America would recognize our situation today as the system of law and government they bequeathed to us over 200 years ago.

In one instance of judicial construction the difference between what "assistance of counsel" meant in 1791, and what the federal judiciary has done to that concept through today, is the difference between black and white. Also the word "infringe" is easily defined in any law dictionary, yet the infringements on the Second Amendment rights can only be charitably defined as an unending series of astonishments ***"Infringment: A breaking into; a tresspass or encroachment upon; a violation of a law, regulation, contract, or right" Blacks Law Dictionary 6th Edition page 780***.

The plain fact is plain-- judges make law by judicial construction, by changing the meaning of words. Congress makes suggestion. Judges make law by extending a statute by intendment or application. ***See Securities & & Exchange***

Commission v. Glen W. Turner, Inc. 474 F2d 476 (9th Cir. 19730 and S.E.C. v. Joyner 64 S.Ct 120.

ARGUMENT IV: Did The Lower Court Deny Plaintiff's Their Right To Have a Jury Determine if Respondents Wachovia Bank Of North Carolina, William J. Williamson And Unnamed Others damaged the Petitioners?

The Respondents Wachovia Bank Of North Carolina, William J. Williamson And Unnamed Others contracted with the Petitioners to hold certain intangible property. Said Respondents violated their fiduciary responsibility by unlawfully transmitting private financial information to third parties [U.S. governments employees, officers, agents] with out proper statutory, regulatory and constitutional authority ***see: California Bankers Associations v. Schultz supra***. The discover process would have shown the fact to prove the petitioners position.

CONCLUSION

It is an inescapable conclusion that the Petitioner-Appellants' right to trial before a jury has been denied them, without any sort of hearing on the merits of their case, thereby denying them reasonable and meaningful access to the courts. For these reasons this Honorable Court should reverse the dismissal of the lower court and order this action to proceed through the completion of discovery, at which time the facts will clearly require a jury trial.

ORAL ARGUMENT

Oral Arguments are not requested as the issues before this Honorable Court are based solely on the Constitutional issues At-Law and valadated by case law of the Supreme Court of the United States and lower courts.

Respectfully submitted,
Dated this 15 Day of April 1998

William Sanford: Gadd
Eddie Bradford: Lee
Kathy Carole: Moore

Appendix C

United States District Court
In and For the Western district of North Carolina

Order and Judgment

Issued November 18, 1997

This matter is before the court on various motions by the Defendants to either dismiss the case on the pleading pursuant to Rule 12 of the Federal Rules of Civil Procedure, or to dismiss the Plaintiffs' claims on the basis of governmental immunity [documents No. 6-1, 12-1, and 13-1]. Taken together, all of the Defendants have filed dispositive motions with the Court. Because the Court finds that these motions have merit and that each of the Defendants are entitled to dismissal as a matter of law, it will grant the Defendants' Motions to Dismiss.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The Plaintiffs are seeking injunctive relief, the return of property, compensatory damages, and punitive damages following the seizure of trust assets. Following a joint investigation by the Internal Revenue Service, Federal Bureau of Investigation, Federal Postal Inspection Service, and United States Secret Service, Magistrate McKnight signed a Search Warrant on June 17, 1997 which was executed the following day by Special Agents Rice and Paulson of the United States Secret Service, Special Agent Mueller of the Federal Bureau of Investigation, and Special Agent McClellan of the Internal Revenue Service. Pursuant to the Warrant, assets were seized from fourteen trust accounts at the Huntersville, North

Carolina branch of Wachovia Bank of North Carolina.

This action was filed on June 24, 1997. On July 11, 1997, the Court granted federal defendants' Motion to Extend Time, allowing Defendants McKnight, Mueller, Paulson, and Rice to respond by September 11, 1997. On July 18, 1997 the Court granted Defendants Wachovia and Williamson's Motion to Extend Time, allowing a response to the Complaint by August 11, 1997. The Court denied Plaintiffs' Motion for Entry of Default and Default Judgement against Defendant Rice on September 16, 1997.

II. DISCUSSSION AND ANALYSIS

A. Magistrate McKnight

Claiming that the Search Warrant was signed without any proof of any crime presented, and thus violative of due process, Plaintiffs have brought a laundry list of claims against Magistrate McKnight. Specifically, Plaintiffs claim that Magistrate McKnight has committed fraud, contempt for the Constitution, and perjury, neglected to correct and prevent the violations of Plaintiffs' constitutional rights, violated Plaintiffs' Fourth Amendment rights, violated 42 U.S.C. §§1983 and 1985, did not uphold his oaths and affirmations to defend Plaintiffs' constitutional rights, and committed extortion, bank fraud, kidnapping, conspiracy, and assault.

It is well established that judges are absolutely immune from liability for judicial acts that are not performed in clear absence of all jurisdiction, however erroneous the act

and however evil the motive. Stump v. Sparkman, 435 U.S. 349 (1978); Pierson v Ray, 386 U.S. 547 (1967). The Fourth Circuit has held that a judge is absolutely immune from a claim for damages arising out of his judicial actions. Chu v. Griffith, 771 F.2d 79,81 (4th Cir. 1985).

It is well settled that a trial court should not dismiss a complaint for failure to state a claim, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, unless it appears beyond a doubt that the nonmoving party can prove no set of facts in support of its claim which would entitle it to relief. Further, a court should accept as true all well-pleaded allegations of the complaint, and construe the complaint in the light most favorable to the nonmoving party. Shurer v Rhodes, 94 S.Ct. 1683, 1686 (1974); Mylan Laboratories, Inc. V. Martkari, 7 F.3d 1130, 1134 (4th Cir. 1993).

The claims made by Plaintiffs against Magistrate McKnight involve only his activities as a magistrate judge presiding over the seizure proceedings. Even with the Court accepting as true all claims made by Plaintiffs, as well as construing the complaint in the light most favorable to the Plaintiffs, it appears beyond a reasonable doubt that Plaintiffs can prove no set of facts to support their claim for relief. Accordingly, the Court will dismiss all claims made against Magistrate McKnight pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

B. Federal Defendants

Claiming that the seizure of trust assets pursuant to the Warrant signed by Magistrate McKnight was illegal and unconstitutional, Plaintiffs have brought a wide variety of claims against Defendants McClellan, Rice, Paulson, and Mueller. Specifically, Plaintiffs allege that these Defendants committed fraud, contempt for the Constitution, constructive treason against the citizens of the United States, and perjury, neglected to correct and prevent violations of the Plaintiffs' constitutional rights, violated the Plaintiffs' civil rights, violated 42 U.S.C. §§ 1983 and 1985, failed to uphold their oaths and affirmations to defend Plaintiffs' constitutional rights, and committed extortion, bank fraud, mail fraud, kidnapping, conspiracy, and assault. Defendants argue that Plaintiffs' entire action should be dismissed pursuant to Heck v. Humphry, 512 U.S. 477, 114 S.Ct. 2364 (1994), or be dismissed pursuant to Rule 12 (b) (6) of the Federal Rules of Civil Procedure.

1. Heck v. Humphry

In Heck the Supreme Court held that in order to recover damages for an unconstitutional conviction or imprisonment, a plaintiff pursuing a claim under 42 U.S.C. §1983 must demonstrate that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court's issuance of a writ of habeas corpus. However, the Fourth Circuit, in Brooks v. City of Winston Salem, N. C., 85 F.3d 178 (4th Cir. 1996), specifically rejected defendants' contention that Heck

should be expanded to include protection of unconstitutional seizure claims, stating:

> We do not read Heck to compel a conclusion that all claims of unconstitutional seizure accrue only upon a termination of the criminal proceedings favorable to the §1983 plaintiff.

Accordingly, the Court will not expand Heck to include the claims made by Plaintiffs in order to provide relief for Defendants.

2. 12(b)(6)

As discussed above, the Court may, pursuant to Rule 12(b)(6) of the Federal Rules of civil Procedure, dismiss Plaintiffs' claims only if, accepting all well-pleaded allegations in the complaint as true and construing the complaint in the light most favorable to the Plaintiffs, there appears beyond a reasonable doubt that the Plaintiffs can prove no set of facts in support of their claim which entitle them to relief.

a. Heightened Pleading

In cases alleging constitutional violations by federal agents, the Fourth Circuit requires a "heightened pleading" of how plaintiff's constitutional rights were violated. Dunbar Corp. v. Lindsey, 905 F.2d 754, 764 (4th Cir. 1990). Complaints against federal officials for constitutional tort causes of action must clearly set forth such facts that will show the existence of the clearly established constitutional right and what the defendants did to violate it. Awalt v. Whalen, 809 F. Supp. 414 (E.D. Va. 1992).

In this action, Plaintiffs complain that the Federal Defendants violated their Fourth Amendment Rights by taking property without a proper search warrant. Plaintiffs do not, however, allege how the search warrant was deficient. Further, although Plaintiffs have alleged that Defendants have committed a long list of violations, there is no specificity concerning any of the charges, other than that the agents served the warrant signed by Magistrate McKnight. Therefore, the Court finds that Plaintiffs have failed to meet the Fourth Circuit's heightened pleading requirement for constitutional claims.

b. Governmental Immunity

Government officials have qualified immunity from constitutional claims relating to their discretionary actions unless they violated clearly established law. Anderson v. Creighton, 483 U.S.635. 639 (1987). Mitchell v Forsyth, 472 U.S. 511, 530 (1985). The law must be so well established that any reasonable law enforcement officer would have recognized that their actions were wrong. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).

In the Fourth Circuit, the determination of a defense of qualified immunity involves three distinct steps: (1) identification of the specific right allegedly violated; (2) determining whether at the time of the alleged violation the right was clearly established; and (3) if so, then determining whether a reasonable person in the officer's position would have known that doing so would violate that right.

Simmons v Poe, 47 F.3d 1370, 1385 (4th Cir. 1995). Plaintiffs' complaint fails in connection with all three elements. There is no right to be free of searches pursuant to warrants. Thus, that right was not clearly established at the time of the actions and a reasonable person would not have known that the action was prohibited, since in fact it was not. Therefore, the Court finds that Agents McClellan, Rice, Paulson, and Mueller are protected by qualified governmental immunity.

As the Plaintiffs have failed to allege any claims against Agents McClellan, Rice, Paulson, and Mueller with the specificity demanded by the Fourth Circuit which would defeat these Defendants' assertions of qualified immunity, the Court will dismiss Plaintiffs' claims pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

C. Defendants Wachovia and Williamson

Plaintiffs allege that Williamson and Wachovia Bank violated their constitutional rights under color of law by the "taking of property without due process of law." Violated the Right to Financial Privacy Act, violated fiduciary and contractual obligations to the Plaintiffs, and engaged in bank fraud, mail fraud, and a kidnapping conspiracy.

1. 42 U.S.C. §1983

Although the Constitution does afford a remedy for deprivation of constitutional rights, via 42 U.S.C. §1983, that deprivation is only protected when it takes place under color of any statue, ordinance, regulation, custom, or usage of any State or Territory. Lugar v.

Edmondson Oil Co., 457 U.S.922, 924, 102S.Ct. 2744, 2747 (1982) (citing U.S.C. §1983). In order to be actionable under §1983, the offending conduct must be perpetrated under color of state law, or otherwise qualify as state action. United Auto Workers v. Gaston Festivals, Inc., 43 F.3d 902, 906 (4th Cir.1995).

Wachovia's status as a national banking association regulated by the federal government does not sufficiently implicate the state so that either it or its employees can be subject to civil rights actions. Moose Lodge No. 107 v Irvis, 407 U.S. 163, 92 S.Ct.1965 (1972); Ordower v. Office of Thrift Supervision, 999 F.2d 1183, 1187 (7th Cir. 1993). Accordingly, the Court will dismiss Plaintiffs' §1983 claim against Defendants Williamson and Wachovia.

2. Right to Financial Privacy Act

Plaintiffs claim that Defendants Williamson and Wachovia violated the Right to Financial Privacy Act (RFPA) by breaching the bank's fiduciary and contractual obligations to Plaintiffs. The RFPA prohibits the disclosure of records of a customer of a financial institution, with certain exceptions. Customers are defined as persons using the institution's services and is limited to individuals or a partnership of fewer than five individuals. 12 U.S.C.§3401(4) and (5). The RFPA does not apply to corporations or trusts. In re Porras, 191 B.R.357, 359 (W.D.Tex. 195); Jobin v. Resolution Trust Corp., 156 B.R. 834, 837 (D.Colo. 1993). Because the information given to the Government, as well as the property seized,

was from a trust, and trusts are afforded protection under the RFPA, Williamson and Wachovia did not violate their provisions in complying with Judge McKnight's order. Accordingly, the Court will dismiss Plaintiffs claim that Williamson and Wachovia violated the RFPA.

3.Fraud and Kidnapping

Plaintiffs allege that several frauds have been committed against them by Defendants, including mail and bank fraud. Rule 9(b) of the Federal Rules of Civil Procedure states that "in all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." Plaintiffs do not recount the specific circumstances allegedly constituting fraud, nor do they allege specific fraudulent intent. Such pleading is insufficient to survive Defendants' Motions to Dismiss. Raffaele v. Designers Break, Inc. 750 F.Supp.611,612 (S.D.N.Y. 1990).

In addition to their failure to plead fraud with particularity, Plaintiffs have failed to state a claim upon which relief can be granted under the bank fraud, mail fraud, or kidnapping statutes. The criminal statutes cited by Plaintiffs, 18 U.S.C. §§ 1201, 1341, and 1344, expressly provide for criminal penalties, and no private cause of action exists under them. Federal Sav. And Loan Inc. Corp. V. Reeves, 816F.2d 130, 138 (4th Cir. 1987); Park Nat'l Bank of Chicago v. Michael Oil Co., 702 F.Supp. 703, 704 (N.D.Ill. 1989); Creech v. Federal Land Bank of Wichita, 647 F.Supp. 1097, 1099 (D.Colo. 1986). Therefore, Plaintiffs have failed to state a claim upon

which relief can be granted against Defendants Williamson and Wachovia. Accordingly the Court will dismiss all claims against Defendants Williamson and Wachovia pursuant to Rule 12(b)(6).

III. CONCLUSION

Plaintiffs have failed to state any claim upon which relief may be granted against Magistrate McKnight, Special Agents McClellan, Rice, Paulson, and Mueller, or Defendants Wachovia Bank of North Carolina and Williamson. Accordingly the Court will grant Defendants' various Motions to Dismiss.

Further, the Court is concerned that an already burdened judicial system may be compromised by Plaintiffs' frivolous and unnecessary proceedings. Hence the Court is considering, inter alia, economic sanctions against the Plaintiffs, and imposing a system of prefiling review. Consequently, the Plaintiffs will have an opportunity to be heard and show cause as to why their frivolous filings do not warrant sanctions.

Now, therefore, it is ordered that Defendant's Motions to Dismiss [Documents No. 6-1,6-2,12-1, and 13-1] be, and hereby are, granted.

It is further ordered that Plaintiffs must file a memorandum of law in this Court to show cause as to why they should not receive sanctions for their frivolous proceedings, said memorandum of law to be filed no later than December 15, 1997.

It is further ordered that the Plaintiffs' outstanding Motions [Documents No. 8-1, 9-1, 15-1 ,16-1, and 18-1] are denied as moot.

A separate judgment dismissing this action with prejudice will be filed simultaneously with this Order.

This the 18th day of November, 1997.

Robert D. Pottter
Senior United States
District Judge

Appendix D

In the district court of the united States of America or the western district of North Carolina

Comes now the Petitioner(s) without representation, untrained in the law and unfamiliar with the local rules to petition and notice this Honorable Court to vacate Judge Robert D. Potters order & judgment of September 18, 1997 pursuant to F.R.C.P. 60(b) FRAUD & F.R.C.P. 9(b) FRAUD. Judge Robert D. Potters [hereafter Judge Potter] has violated his Oath of Office 28 USC 453, and the Federal Rules of Civil Procedure, and the Federal Rules of Evidence, and Rulings made by the Supreme Court of the United States of America, and the Petitioner(s) Unalienable Constitutional Rights. The Petitioner(s) states the following in support of the notice and petition:

1. Petitioner(s) filed An At-Law Complaint for violations of constitutional rights on June 24, 1997 and paid the $150.00 filing fee. Petitioner paid for & demanded a Trial by Jury pursuant to the 7th Amendment to the Constitution. Judge Potter is required by his oath of office to abide by the Rules of Court as prescribed by the Supreme Court pursuant to Exhibit "A" June 19, 1934 The 73rd Congress Session II 651, 652 "Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant"; and Exhibit "B" June 29, 1940 [Chapter 445] H.R. 4587 "That the Supreme Court of the United States shall have the power to prescribe, from time to time, rules ... including verdict ...by the court if a jury has been waved ... in districts courts of the United States". The Petitioner(s) have not waved their right to a Trial by Jury.
2. Judge Potter is deliberately ignoring the Rules of Court and the Rules of Evidence prescribed by the Supreme Court he is required to follow. Judge Potter is attempting to call Documents 8,9,15,16 moot but fails to justify how these documents are moot. Furthermore Documents 8,9,15,16 have not been disputed by the Respondents/Defendants and

according to F.R.C.P. Rule 8(d) "Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required... are admitted when not denied". Furthermore pursuant to Federal Rules of Evidence Rule 201(d) [Judicial Notice] "When mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary." Judge pottery was supplied with the request and information for Mandatory Judicial Notice. Documents 8,9,15,16 are based on ruling made by the Supreme Court of the United States of America. Judge Potters is not allowed to issue any orders and/or judgments that overrule the Supreme Court, in issuing the said order & judgment that is what he is doing. Therefore Judge Potter's Order & Judgment is VOID pursuant to Rule 60(b)(4) and for Inadvertence, Fraud, Rule 60(b)(1)&(3).

3. The Petitioners case controversy for is based upon Constitutional questions of violations of "Unalienable United States Constitutional Rights". The Petitioner's was based upon the constitution and the following Supreme Court rulings were used in Documents 8,9,15,16 in support of petitioners legal position, which Mandatory Judicial Notice given :

A) "A judge ceases to sit as a judicial officer because the governing principle of administrative provides that courts are prohibited from substituting their evidence, testimony, record, arguments, and rational for that of the agency. Additionally, courts are prohibited from substituting their judgments for that of the agency. Courts in administrative issues are prohibited from listening to or hearing arguments, presentation or rationale" Asis v. U.S. 568 F.2d 284.

B) "It is basic to our law that an administrative agency may only act within the area of 'jurisdiction' marked out by law. If an individual does not come within the coverage of the particular agency's enabling legislation, the agency is without power to take any action which affects him." Endicott v. Perkins, 317 U.S. 501.

C) "The Constitution and laws of the United States are the supreme law of the land and every citizen of every state owes obedience, whether in his individual or official capacity." John F. Jelke Co. v. Emery, 193 Wis. 311, 214 N.W. 369, 53 A.L.R. 463.

D) "It is the duty of the courts to be watchful for the Constitutional rights of the citizens, against any stealthy encroachment thereon." Boyd v. U.S. 116 U.S. 616, 635, (1885)

E) "Silence can only be equated with fraud when there is a legal and moral duty to speak" U.S. Tweel 550 F.2d 297, 299-300 (1977).

F) "(T)he immunity defense fails if a public officer violates clearly established rights because a reasonably competent official should know the law governing his conduct." SANCHEZ v. CITY OF SANTA ANA. 939 F2d 1027 (9~ Cir. 1990), BENTZ v. WOLFE.985 F2d 662(1993), JONES v. COUNCIL, 7 Fad 1359 (1991

G) "The Fourth Amendment provides that: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated" In Bell v. Hood, 327 US 678, 90 L.Ed 939, 66 S.Ct. 773, 13 ALR2nd 383 (1946), we reserved the question weather violation of that command by a federal agent acting under color of authority gives rise to a cause of action for damages consequent upon his unconstitutional conduct. Today we hold that it does." BIVENS v. SIX UNKNOWN NAMED AGENTS OF FEDERAL BUREAU OF NARCOTICS, 403 US 388, 389, 29 L.Ed 2nd 619, 91 S.Ct. 1999

H) "Where rights are secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." Miranda v. Arizona 384 US 436, 491~ 16 L.Ed 2d 694, 86 S.Ct. 1602.

I) "Congress cannot... merely by legislation... amend the constitution." United Transport Union v. ICC 891 F2d 908, 915-916 (D.C. App. 1989)

J) "Congress possess no power not derived from the constitution." State of Nevada v. Watkins 914 F2d 1545, 1552 (9th Cir. 1990)

K) "The legislature cannot enact law for accomplishments of objects not instructed to the federal government." Linder v. U.S. 268 US 5, 45 S.Ct. 446 (1925).

L) "A pretense to act under a power not support legislation out of harmony with the power delegated." U.S. v. Whittenberg 21 F.Supp 713~ 716 (S.D. Texas 1938)

M) "It is the ultimate responsibility of the courts to decide if Congress violated the constitution." Information Providers Coalition v. F.C.C. 926 F2d 866~ 869.

N) It should also be noted that it is critical to public confidence in the courts that judges be seen enforcing law and obeying it themselves U.S. v. Muniz 49 F3rd 36' 43 (IS' Cir. 1995)

O) "A bill of rights is in the nature of a classified list of rights of individuals. Blacks Constitutional Law p.9 (1910). It is a charter of liberties for individual." Robertson v. Baldwin 165 US 275 (1897)

P) "And of course, a Court of appeals cannot overrule the U.S. Supreme Court," Kitowski v. U.S. 931 F2d 1226~ 1529 (11th Cir. 1991)

Q) "An administrative regulation, of course, is not a "statute". While in practical effect regulations may be called "little laws"... Here a statute is not complete by itself,. Once promulgated, these regulations, called for by the statute itself have the force of law,... The result is that neither the statute nor the regulation are complete without the other, and only together do they have any force" US v. Mersky 361 US 437~438,.

R) "These appeals present questions concerning the constitutionality of the so-called Bank Secrecy Act of 1970, and the implementing regulations promulgated thereunder by the Secretary of the Treasury.... Because it has a bearing on our treatment of some of the issues raised by the parties, we think it important to note that the Act's civil and criminal penalties attach only upon violation of regulations promulgated by the Secretary; if the Secretary were to do nothing,

the Act itself would impose no penalties on anyone" California Bankers Association v. Shultz 416 US 25~ 39 L.Ed. 2d 820.

S) "Due process requires that penal statutes define criminal offenses with sufficient clarity that an ordinary person can understand what conduct is prohibited. Kolender v. Lawson, 461 US 352, 357, 103 S.Ct 1855, 75 L.Ed2d 903 (1983).... We held that the regulations implementing the Act do not require individuals to inform either their banks or the IRS that they are engaged in multiple but related transactions in order to avoid the CTR filing requirements. Although the relevant statute authorized the Secretary to impose such a duty, his implementing regulations did not due so. Therefore, we held that there was no duty to disclose, and concluded that in the absence of such a duty there could be no conspiracy to defraud the United States. US v. Murphy 809 F2d 1427, 1431.

4. The Judgment & Order issued by Judge Potter is a violation of the Petitioner(s) Unalienable United States Constitutional Rights of "Due Process of Law" [5th & 14th Amendment] and, "Right to a Trial By Jury" [7th Amendment] and, "Freedom of Speech & Redress of Grievances" [1st Amendment]. Judge Potter in violating the constitutional rights of the petitioners has in fact violated his oath of office 28 USC 453.

5. Judge Potter has a financial interest in issuing the said Order and Judgment since he is able to receive up to ($25,000.00) Twenty Five Thousand Dollars in incentive award for protecting government agents and helping the agents take property without Due Process of Law. Instead of protecting the constitutional rights of citizens it is apparent that Judge Potter is using his position to enrich himself as well as other government employees. [see memorandum hereto attached]

6. Judge Potter is in violation of his cannon code of conduct "It is the duty of the courts to be watchful for the Constitutional rights of the

citizens, against any stealthy encroachment thereon." Boyd v. U.S. 116 U.S. 616, 635, (1885)

CONCLUSION

The Order and Judgment signed by Judge Potter should be vacated pursuant to FRCP Rule 60(b).

Dated this 16th day of November, 1997

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Eddie Bradford: Lee

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William Sanford: Gadd